

REMARKS

Claims 4-17, 19-27, 32, 33, 35-51, 55-66, 71, 72 and 74-82 are pending.¹ Favorable reconsideration is requested.

Claims 4, 7-8, 10, 13-17, 19, 32-33, 35, 55, 58, 59, 61, 64-66, 71, 72 and 74 were rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the position was taken that the limitation that the use of power is measured “during a data transfer time” was not present in the original specification. Applicants disagree.

The originally filed independent claims in this application as well as the specification describe this limitation. For example, originally filed claims 17, 33 and 35 recite this feature. Further, Figs. 9A, 10A, 11A, 12A and 13A, for example, and the corresponding description in the specification, e.g., at page 37, line 10 et seq., describes the measurement period T (long horizontal double headed arrow in those figures) which occurs during a data transfer time. In Fig. 11A, for example, the measurement period T is occurring during data transfer periods T1, T2 and T3. Withdrawal of the rejection is respectfully requested.

Claims 4, 7, 10, 13, 16, 17, 32, 33, 55, 58, 61, 64, 71 and 72 were rejected under 35 U.S.C. § 103 over the admitted prior art on pages 1-7 of the application in view of U.S. Patent No. 6,728,228 to Ostman. Claims 19, 35, and 74 were rejected under 35 U.S.C. § 103 over the admitted prior art in view of U.S. Patent Publication No. 2003/0189915 to Miller and Ostman. Applicants submit that the independent claims under consideration are patentable for at least the following reasons.

The independent claims each recite, inter alia, calculating an average value of the use of a resource, such as power, or an average number of the use of codes, which was measured *during a*

¹ Claims 5, 6, 9, 11, 12, 20-27, 36-51, 56, 57, 60, 62, 63 and 75-82 have been withdrawn from consideration.

data transmission time. The resource to be used, e.g., power or the number of codes, is then controlled based on the average.

This feature is not described in the admitted prior art. In the known 3GPP standard the measurement is performed in a prescribed measurement period, separate from the period of data transmission. The position was taken in the Office Action that this feature is taught by Ostman. Applicants disagree.

Ostman teaches measuring the received signal strength information (RSSI). That is, in Ostman, what is measured is the *strength* of the received signal. On the other hand, the recited measurement of the number of use of the codes means measuring *the number* of the used codes. RSSI is a measurement value that is quite different from the number of use of the codes, as recited and cannot be measured by identical criterion. Similarly, measurement of RSSI is not the same as measuring power during the data transfer time, as is recited in several of the independent claims. Applicants submit that at least in view of the differences in the measurement criteria, one of ordinary skill in the art would not have modified Ostman to measure the number of the used codes, or the power, in the recited manner.

Moreover, the technology of Ostman is different from that of the present application. For example, in Ostman's technology, as discussed in col. 6, lines 3-4, the control channel signal and the dedicated traffic channel signal assign the predetermined Channelization codes. Therefore, the increase or decrease of the "number of use of the codes" due to passage of time is small in Ostman.

On the other hand, the increase or decrease of the number of use of the codes due to passage of time in the invention of the present application is larger than that of Ostman, because, for example, the HSDPA assigns the Channelization codes when scheduling is performed. For at least this additional reason, applicants submit that one of ordinary skill in the art would not modify Ostman to meet the claim limitations.

For at least the foregoing reasons, the independent claims are believed patentable over the cited art.

The dependent claims are believed patentable for at least the same reasons as their respective base claims. In view of the above remarks, applicants believe the pending application is in condition for allowance.

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Respectfully submitted,

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